



## **Minutes of the 8<sup>th</sup> Meeting of the Expert Group on Framework Decision 2008/913/JHA on Combating Racism and Xenophobia by Means of Criminal Law**

3 July 2015 at 10.00-16.30  
Albert Borschette, AB-2C

The meeting was chaired by Ms Chiara Adamo, DG JUSTICE C.1 (Head of Unit).

22 Member States (BE, BG, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LV, LU, NL, PL, RO, SE, SI, SK and UK) were represented in the meeting.

The Commission was represented by C Adamo, D Friggieri, C Mercadé Piqueras, L Ravo (JUST.C.1). The Council SG was present as observer (P Nalewajko).

### **1. Adoption of the draft agenda and of the report of 7th meeting of the Expert Group**

The agenda was approved without comments.

**DG JUSTICE** also requested comments on the Minutes of the last meeting (7th Meeting of the Expert Group on Framework Decision 2008/913/JHA on Combating Racism and Xenophobia by Means of Criminal Law, 13 February 2015). No comments were made.

### **2. Brief state of play by the Commission on relevant developments in EU policies for combating racism, xenophobia and other forms of intolerance**

**DG JUSTICE** debriefed the experts on recent and ongoing initiatives related to EU policies for combating racism, xenophobia and other forms of intolerance.

This included a **brief overview of the Commission's approach in recently adopted Commission communications in the area of security, migration and digital single market as far as aspects relevant to the fight against racism and xenophobia are concerned.**

DG JUSTICE highlighted, in particular, the emphasis put in the **European Agenda on Security** adopted on 28 April on the need to step up actions to support MS in developing proactive investigation and prosecution practices on the ground to combat racism and xenophobia, including through funding, and to address hate speech online, as part of the preventive measures needed to address the root causes of extremism and radicalisation

(together with education, youth participation, interfaith and inter-cultural dialogue, employment and social inclusion).

Another development DG JUSTICE mentioned was the adoption on 6 May of the **European Digital Single Market Agenda**, where the Commission committed to analyse how best to tackle illegal content on the Internet – an ongoing reflection which bears relevance for discussions around how to step up action and address online hate speech.

DG JUSTICE finally mentioned the adoption on 13 May of the **European Agenda on Migration**, in the context of which increased attention was devoted in internal discussions on the need to devote attention to the issue of racism and xenophobia in the context of integration policies.

DG JUSTICE underlined how these developments show that preventing and combating racism and xenophobia has proved to acquire **growing importance as an horizontal priority across different policy areas for the EU**, and imply a commitment by all Commission services to work together and use all the tools at their availability to contribute promoting mutual respect and ensuring that everyone, irrespective of race, ethnicity or religion is given a place in our society. The political relevance of the issue is also reflected in the initiative by First Vice President Timmermans and Commissioner Jourová of organising the first ever **Annual Colloquium on fundamental rights** precisely on preventing and combating racism and xenophobia, with a focus on antisemitism and anti-Muslim hatred (the initiative was presented in detail by the Commission in the afternoon session of the meeting).

DG JUSTICE thus highlighted that ensuring a **rigorous and effective transposition and implementation on the ground of the Framework Decision by all Member States** is a priority now more than ever, and gave delegations further information on the **state of play** of the Commission's enforcement activity. DG JUSTICE informed delegations that, having acquired since 1 December 2014 full enforcement powers in relation to the Framework Decision, 15 administrative letters pointing out issues of incomplete, incorrect or imprecise transposition of the provisions of the Framework Decision as well as issues relating to the practical implementation of this instrument were sent out until that moment. DG JUSTICE also informed delegations that the situation of the remaining Member States was being assessed and that the Commission would contact in the autumn those Member States with which a bilateral meeting appears necessary to discuss important transposition issues. Following a question from the **SE** delegation, DG JUSTICE informed delegations that replies to the administrative letters already received from the Member States were being analysed with a view to a further exchange in the autumn. DG JUSTICE underlined that, where key transposition gaps remain in light of the analysis of Member States' replies and the bilateral meetings, EU pilots will be sent in the course of the second semester of this year, with a view to launching possible infringement proceedings where needed in 2016. Particular emphasis shall be put in this context on the transposition of the three key provisions of the Framework Decision, and namely (i) the provision on the criminalisation of Holocaust denial when it incites to violence or hatred (Article 1(1)(d)), (ii) the provision on the obligation of taking the racist or xenophobic motivation of crimes into account when determining penalties (Article 4), and (iii) the provision regulating jurisdiction of national courts on cases of online hate speech (Article 9(2)).

DG JUSTICE emphasised at the same time its intention to **prioritise actions to help Member States in developing capacity, tools and practices to promptly investigate**

**and prosecute any alleged racist or xenophobic acts.**

This shall include continuing **discussions on good practices** and on the added value of compiling and further disseminating these good practices, as well as continuing to support and follow the work of the **FRA-led Working Party on Improving Reporting and Recording of Hate Crime in the EU** (Hate Crime Working Party). Regarding the latter, the Commission informed delegations that the Working Party met again in Riga on 30-31 March under the Latvian presidency, where discussions focussed on three main issues:

- sharing experiences of national practices in the three identified areas ((1) reporting and official recording – UK led; (2) cooperation and synergies between various actors – ES led; (3) training – BE led) with a focus on their transferable aspects)
- learning from the experiences of the participants who attended a workshop held in London on 23 March on hate crime reporting, where the UK shared information about their experience and practices, including the True Vision website (about which we had a presentation here at our last meeting);
- reflecting over the possible development of a set of principles for training and the compilation of practices.

The **UK** delegation later took the floor and highlighted the relevance of the work done by the Working Party, referring in particular to the London workshop as a good example of a platform facilitating in-depth exchanges, which should be reflected in the cooperation with national authorities working on policies. The UK delegation also informed the experts of the intention of holding another mirror workshop in the autumn.

DG JUSTICE reminded delegations that the Working Party will be working on a compendium of operational good practices (online toolkit) and the possible development of progress indicators on the areas addressed, i.e. reporting and recording, cooperation and training. DG JUSTICE announced its intention to invite FRA and the representatives of the leading Member States of the Working Party to present more in detail their activities and the results achieved so far at the next Expert Group meeting in the autumn.

DG JUSTICE finally provided delegations with updated information **on funding possibilities under the Rights, Equality and Citizenship Programme 2014-2020**. DG JUSTICE informed the group that the evaluation of the proposals received under the 2014 call was finalised, with an amount of financing provided of more than 1 million EUR for the BEST priority (best practices to prevent and combat racism, xenophobia, homophobia and other forms of intolerance) and almost 3 million EUR for the HATE priority (monitoring and reporting on hate crime and on-line hate speech), with some additional projects put on a reserve list depending on availability of funding. DG JUSTICE underlined that all projects selected have a potential very wide transnational impact, due to the large partnerships and the transferability of the methodology used. Some are directly very relevant for the implementation of provisions of the Framework Decision or for monitoring and detecting online hate speech. Some projects specifically address certain vulnerable communities (in particular migrants and LGBTI persons).

As to the 2015 call, it is expected to be published in the autumn. It will make available a total of 5 400 000 EUR for action grants for projects addressing racism and xenophobia and will be based on the following priorities listed in the 2015 Annual Work Programme published at the end of March:

- Sharing and exchange of best practices to prevent and combat racism, xenophobia, anti-Semitism, Muslim hatred, homophobia, transphobia and other forms of intolerance, in particular, but not limited to hate crime and hate speech;

- Training and capacity building for strengthening criminal responses to hate crime and hate speech;
- Empowering and supporting victims of hate crime and hate speech.

DG JUSTICE also underlined that a general discussion on how to reprioritise and enhance synergies of existing initiatives and funds to step up action in this area is ongoing with other Commission services. To that effect, DG JUSTICE is conducting a **mapping** of all existing initiatives and funds contributing to (1) social inclusion of EU citizens and integration of migrants or (2) the prevention of and fight against racism, xenophobia and extremism and (3) common EU values and a pluralist democratic society. The intention is to make this mapping public to raise awareness about funding possibilities and enhance their effectiveness. Following a question from the **UK** delegation, DG JUSTICE clarified that the aim is to making the mapping available on the internet in the course of the autumn. A preliminary presentation of the mapping could be provided in the next meeting of the Expert Group.

The **UK** delegation took the floor to raise the issue of **data collection**, underlining that, as discussions during the underreporting workshop held in London showed, there is a huge disparity of hate crimes recorded in the Member States which makes comparisons very difficult. The importance of the exchange and sharing of data and information was underlined as crucial, as well as the potential role of using the internet as a solution and the contribution of community engagement (good practices on cooperation between State and non-State actors on data collection in ES and UK mentioned as examples). **DG JUSTICE** agreed on the importance of effectively addressing the issue of data collection, including through cooperation with civil society, and informed the experts that reflections are ongoing with FRA on possible action in this area (developing methodologies, etc), in addition to a horizontal reflection in the Commission on possible initiatives on crime statistics.

### **3. Discussion on compilation of existing best practices to ensure the application of Articles 4 and 8 of the Framework Decision**

**DG JUSTICE** presented to delegations a **draft compilation of existing best practices on the application of Article 4 and Article 8 of the Framework Decision**, based on the replies provided by Member States to the questionnaire sent ahead of the seventh meeting, as well as on information gathered by the Commission in the context of its bilateral dialogues with the Member States. The compilation was made following up to the 7<sup>th</sup> meeting of the Expert Group, where a first in-depth discussion on existing best practices and challenges related to the implementation of Article 4 and Article 8 of the Framework Decision was held, on the basis of a questionnaire circulated ahead of that meeting, to which 18 Member States had provided a reply until that moment.

The presentation, already circulated to the delegations, elaborated the information gathered from the Member States to classify the best practices identified in the following 13 categories, illustrating for each of them selected examples:

- Targeted investigation and/or prosecution guidelines
- Preventing and combating racism and xenophobia established as a political priority
- Specific investigation tools and practices to unmask racist and xenophobic

motivation and gather evidence

- Ex-officio investigation and prosecution
- Targeted training
- Setting up of special units/departments within law enforcement, prosecution or other governmental or non-governmental bodies
- Tools and practices on monitoring, recording and data collection
- Measures addressed at encouraging reporting and supporting victims
- Cooperation among national authorities and with non-State actors
- Cooperation with media
- National strategies or action plans
- Awareness-raising campaigns and education
- Publications

The presentation also looked into the role of the main actors involved, and namely police forces, public prosecutors and judicial authorities, other national authorities and non-State actors such as civil society organisations.

After the presentation, the experts were invited to engage in a discussion on the basis of the following questions:

- Is the classification and selected typology of practices appropriate?
- Which are the most effective practices in light of challenges faced, also in light of the possibility to replicate them?
- Which are the main areas you would identify as most relevant to dig into for possible thematic meetings?

The **UK** delegation intervened to highlight the importance of recording and monitor specific forms of hate crime as a good practice, and the possibility to disaggregate data within those strands (e.g. L G B T, different religions, race and ethnicity).

In the absence of further reactions, DG JUSTICE recalled once again to those delegations which had not send their contribution to the Commission to do so without further delay, setting a **deadline on 1 September 2015**. Delegations were also invited to send in writing their comments to the presentation made by DG JUSTICE, trying to address the three questions above, in order to allow DG JUSTICE to assess the opportunity of specific thematic and operational discussions for the next meetings.

#### **4. Tackling hate speech on the internet**

As a follow up to discussions held at the 7<sup>th</sup> meeting of the Expert Group, where the Expert Group started reflecting about challenges and ways forward to address effectively the issue and upon possible actions at EU level that may assist Member States, **DG JUSTICE** debriefed the experts on **relevant developments related to ongoing discussions at EU level on how to tackle illegal content online, including online hate speech**.

The presentation made by DG JUSTICE, already circulated to delegations, referred in particular to the mention of the importance of stepping up action to combat online hate speech in the **European Agenda on Security**, and to other actions included in that Strategy which may bear a relevance for combating online hate speech (in particular, the

upcoming setting up of an **EU-level Forum with IT companies**, geared at providing a forum for ISP companies to cooperate closely with law enforcement authorities and civil society; and the work of the recently set-up **RAN Internet and Social Media (RAN @) Working Group under the Radicalisation Awareness Network**, geared at the dissemination of counter- and alternative narratives through the Internet and social media). DG JUSTICE presentation also mentioned relevant developments stemming from the adoption of the **Digital Single Market Strategy**, and in particular the launch of a **public consultation** scheduled for September which will address the issue of intermediary liability which may lead to a refining of the relevant articles of the e-commerce Directive, in the context of which hate speech will be addressed as a specific type of illegal content. Finally, information was provided on the **funding of hate speech monitoring projects** under the Rights, Equality and Citizenship Programme, and in particular the selection by the Commission of a number of projects under the 2014 call for proposals of projects aimed at i) developing tools to detect and monitor hate speech, ii) linking up to law enforcement authorities and iii) enabling citizen reporting. Following a question from the **FR** delegation, DG JUSTICE clarified that preventing and combating online hate speech will remain a priority in the upcoming 2015 call, and that a reflection is ongoing on the possibility of having a restricted call for Member States in the future.

DG JUSTICE also presented a **short overview of existing good practices at national level on tackling hate speech online**, identified on the basis of Member States' replies to the questionnaire and information gathered in the context of our bilateral dialogues. The presentation, also circulated to delegations, mentioned in particular the following good practices, providing examples from selected Member States:

- Development of specific frameworks or guidelines for law enforcement or judicial authorities
- Setting up of special law enforcement or prosecution units
- Setting up of special platforms for monitoring and recording
- Providing financial support to non-State actors
- Promising case-law
- Strengthened cooperation between national authorities and/or cooperation with non-State actors such as civil society organisations
- Specific training programmes
- Awareness raising

As a general point, there seemed to be consensus among a number of delegations as it concerns the importance of cooperation with Internet Service Providers and the fact that initiatives at EU level in this area should address illegal content **horizontally** and provide for a **comprehensive, coordinated and coherent approach** (UK and SE in particular).

The **UK** delegation highlighted in particular the challenges in liaising with Internet industries, including for international organisations, as shown by past experiences, underlining the importance of speaking with one voice and mentioning the coalition on antisemitism as a good example in this area. **DG JUSTICE** underlined that the intention will be to look at the role of intermediaries and illegal content across the board and encouraged Member States to exchange information about existing cooperation with Internet Service Providers.

**FR** underlined that a number of actions specifically tackling online hate speech have been included in the **global national action plan on hate crime 2015-2017** coordinated by the office of the Prime Minister, including: making the FAROS platform easier to use and effective by developing a plug-in to report illegal content; setting up a police unit to conduct a permanent monitoring; drafting compulsory guidelines on online content to be published online by Internet Service Providers; and enhancing training and awareness raising to the public. **DG JUSTICE** expressed interest for these initiatives and invited **Member States which have in place action plans to present to the Commission their main elements**, with a view to a possible discussion at the next meeting.

**SE** also stressed that challenges in addressing online hate speech mostly derive from the protection enshrined in the national constitution to freedom of speech, and underlined that a repressive approach (notice and take down) may have negative consequence (as it happens already in the area of countering terrorism and radicalisation). Against this background, focus is being put on preventive measures in particular in the area of education. **DG JUSTICE** agreed on the importance of **preventive measures**, stressing that this approach was clearly reflected in the European Agenda on Security. As it concerns the **balance between free speech and hate speech**, **DG JUSTICE** reiterated its commitment to ensure that a fair balance is always struck (in particular in the context of debates around the Digital Single Market Agenda), and referred to relevant provisions of the Framework Decision, underlining that jurisprudence from the European Court of Human Rights should help in the case by case assessment of specific circumstances.

Mr François Deleu, **expert from the Belgian *Centre interfédéral pour l'égalité des chances***, was then invited to make a presentation to illustrate the existing framework for cooperation between justice authorities, the police and the *Centre* in monitoring, detecting and tackling instances of online hate speech, as well as about their own work in this area and main challenges they are facing. The *Centre*, as Mr Deleu later explained following a question by **DG JUSTICE**, performs its duties as mandated in a comprehensive and detailed legal framework, developed since the 1990s when a strong mobilisation of civil society on issues around discrimination, racism and xenophobia began. Mr Deleu's presentation, already circulated to delegations, besides illustrating the legal framework as well as the role and tasks attributed to the *Centre*, provided information on the magnitude of online hate speech in Belgium, and gave examples on different avenues through which the phenomenon is tackled, including through partnerships with journalist associations and social networks, the development of counter narratives, training initiatives and avenues for cooperation with law enforcement authorities and prosecutors.

A specific question was asked by the **FR** delegation, as it concerns in particular jurisdiction of the courts on press crimes. Mr Deleu clarified that under the Belgian legal framework the prosecution of press crimes motivated by reasons other than racism and xenophobia (for example, religion) is more difficult because the competence belongs to the *cour d'assise*.

Another question posed by the **FR** delegation concerned how instances of online hate speech on Twitter are addressed. Mr Deleu replied, however, that the *Centre* has had no experience so far in dealing with this issue.

<b>5. Presentation by the Commission of the 2015 Annual Colloquium on Fundamental Rights, focussing on “Tolerance and respect: preventing and combating antisemitic and anti-Muslim hatred in Europe”</b>
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DG JUSTICE provided a detailed presentation of the **background and concept of the first Annual Colloquium on fundamental rights in the EU** scheduled for the 1st and 2nd of October 2015 in Brussels upon initiative of First Vice President Frans Timmermans in cooperation with Commissioner Věra Jourová.

DG JUSTICE clarified that the Colloquium is intended as a tool for improving mutual cooperation and greater political engagement for the promotion and protection of fundamental rights in Europe. It seeks to strengthen dialogue between the EU and international institutions, policy makers, academia and civil society, to deepen the understanding of challenges for fundamental rights on the ground and identify gaps, with a view of achieving progress on topical fundamental rights issues.

The choice of the theme for this first edition of the Colloquium ("**Tolerance and respect: preventing and combating anti-Semitic and anti-Muslim hatred in Europe**") came from the observation of the steady rise in antisemitic incidents in recent years, culminating in fatal terrorist attacks in Toulouse, Brussels, Paris and Copenhagen, and of very worrying trends with regard to anti-Muslim hatred, with growing evidence of an increase in verbal and physical violence in several EU countries. Although the two phenomena are clearly different in origins, history, manifestations and impacts, they have in common a worrisome increase of the number of hate incidents and of the feeling of alienation that affects both of these European communities. As such, they are exemplary for other forms of hatred and intolerance, which must be equally fought and they are in practice addressed with common tools.

DG JUSTICE explained that the idea is for the Colloquium to offer a key opportunity to give a further political push to enhance the joint responsibility and effort to address racism and xenophobia, and in particular antisemitism and Islamophobia, effectively and to discuss and define future actions to be delivered at different levels.

To this aim, the Colloquium will bring together a selected number of high level participants from across the EU: national ministers, representatives of leading human rights and religious organisations, international institutions, MEPs and renowned academics and philosophers.

Discussions will look at trends and underlying reasons of antisemitic and anti-Muslim incidents in the European Union, their impact on people's lives and rights and how to break indifference of the society. Participants will explore the most relevant avenues to address these phenomena, and examine to what extent they require specific or common responses. Focus will be put on how to use the tools at disposal to support concrete action on the ground and further enhance our existing policies and legislation designed to combat hate crime, hate speech and discrimination. The role of EU and international institutions, Member States, local authorities, civil society, community leaders, the media, education and the world of employment will be looked at, with a view to joining up efforts in adequately addressing these phenomena.

In this context, DG JUSTICE underlined that the role of the Expert Group will be particularly relevant in order to promote and contribute to a proactive and effective implementation of the follow up actions which shall be identified during the Colloquium,



at both EU and national level – possibly stepping up cooperation with other stakeholders.

## 6. Focus discussion on preventing and combating antisemitism

In line with the multistakeholder approach on which the idea of the Colloquium is based, **DG JUSTICE** invited for the first time a representative from civil society, director of CEJI (Jewish Contribution to an Inclusive Europe) Mrs Robin Sclafani, to feed into a focus discussion on antisemitism.

CEJI is an international non-profit organisation established in 1991 whose main mission is to promote a diverse and inclusive Europe through diversity education, training, the promotion of interfaith and intercultural dialogue, and advocating against antisemitism and discrimination of all kinds. The presentation by Mrs Sclafani, already circulated to delegations, focussed on the activities of CEJI, including the findings and conclusions of the very successful project *Facing Facts Forward!*<sup>1</sup>, just concluded, their cooperation with other civil society organisations and national authorities and CEJI's views about main challenges and ways forward to prevent and combat antisemitism and other forms of intolerance in Europe.

Moving from the presentation, experts engaged in a rich discussion on how to step up actions to prevent and combat antisemitism which touched upon a number of issues.

In particular, the issue of **data collection** was discussed and the **possible role of civil society** in this area. Mrs Sclafani underlined that civil society can indeed play an important role in facilitating the dialogue between the communities and national authorities, in particular law enforcement, and in receiving and transmitting hate crime reports. Following a question from the **BE** delegation, she clarified that whether civil society can act as intermediary or rather as an actor in directly monitoring and collecting data depends on the community, as there is no one size fits all; the same also goes for the possible role of other actors, such as equality bodies.

Another issue touched upon concerned the possibility of having a **common hate crime definition**. The SE delegation asked in particular whether this would be a legal definition or whether the notion would depend on the culture and experience developed within a certain authority in a certain country. It was the view of Mrs Sclafani that the definition of hate crime should be intended as embedding a combination of these two elements.

A question about the **added value of the enhanced criminal justice response** from the perspective of victims of hate crime was asked by the DK delegation. Mrs Sclafani highlighted, in this regard, that the impact on society as a whole is what makes hate crimes different than other crimes and that indeed the criminal justice response should reflect this.

The importance of **bringing in the civil society perspective when reflecting upon training programmes** was also underlined, as civil society expertise can play a crucial role in addressing bias and prejudice which exist within national authorities, especially

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<sup>1</sup> More information at <http://www.facingfacts.eu/>

law enforcement authorities, and contribute, at the same time, to strengthening victims' trust in the authorities. Mrs Sclafani also underlined that input from civil society in training programmes is also crucial when it comes to refining the elements to be taken into account when identifying a hate crime and identifying the skills needed by the authorities.

Finally, views were exchanged as to the **extent to which responses should be tailored to specific communities vulnerable to hate speech and hate crime**, Jewish and Muslim communities being a paradigmatic example. Mrs Sclafani underlined in this regard that the nature and manifestation of antisemitism differ in various ways in Eastern Europe, where antisemitic attitudes often originate in populist and extremist discourses of the far right, and in Western Europe, where demographics of Muslim communities and the issue of radicalisation play an important role, as it does the political debate around Israel and the Israeli-Palestinian conflict. In this context, the **role of the authorities in supporting religious or community leaders and organisations** was highlighted by Mrs Sclafani, with a view to protecting them and giving them visibility, and facilitating their involvement and cooperation both with and among them.

## **7. Any other business**

No AOB points were raised by delegations.

The group was informed that the **next meeting of the Expert Group** is scheduled to be held in the autumn, to allow a discussion over the outcome of the Annual Colloquium and how to go forward in terms of follow-up.